

**Baker & Hostetler LLP**

45 Rockefeller Plaza  
New York, New York 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

David J. Sheehan

Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)

Jorian L. Rose

Email: [jrose@bakerlaw.com](mailto:jrose@bakerlaw.com)

Seanna R. Brown

Email: [sbrown@bakerlaw.com](mailto:sbrown@bakerlaw.com)

Bik Cheema

Email: [bcheema@bakerlaw.com](mailto:bcheema@bakerlaw.com)

Hearing Date: April 18, 2012

Time: 10:00 a.m.

Objections Due: April 11, 2012

Time: 4:00 p.m.

*Attorneys for Irving H. Picard, Trustee  
for the Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC  
and Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

**NOTICE OF HEARING ON TRUSTEE'S THIRD OMNIBUS MOTION TO EXPUNGE  
CLAIMS AND OBJECTIONS OF CLAIMANTS THAT DID NOT INVEST WITH  
BLMIS OR IN ENTITIES THAT INVESTED IN BLMIS**

**PLEASE TAKE NOTICE** that on March 16, 2012, Irving H. Picard, trustee  
("Trustee") for the substantively consolidated liquidation of Bernard L. Madoff Investment

Securities LLC (“BLMIS”) and the estate of Bernard L. Madoff (“Madoff”) (collectively, “Debtor”) in the above-captioned SIPA liquidation proceeding, by and through his undersigned counsel, filed the Trustee’s motion (the “Third Omnibus Motion”) seeking to have the Court expunge any and all claims and objections filed by or on behalf of claimants (“Claimants”) that did not invest with BLMIS, or in entities that invested with BLMIS, and that a hearing (the “Hearing”) to consider the Third Omnibus Motion will be held before the Honorable Burton R. Lifland, United States Bankruptcy Judge, at the United States Bankruptcy Court, the Alexander Hamilton Customs House, One Bowling Green, New York, New York 10004, on **April 18, 2012 at 10:00 a.m.**, or as soon thereafter as counsel may be heard.

**PLEASE TAKE FURTHER NOTICE** that, any responses to the Third Omnibus Motion shall be in writing and shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court electronically in accordance with General Order M-242 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)) by registered users of the Bankruptcy Court’s filing system, and served in accordance with General Order M-242, and on (i) Baker & Hostetler LLP, counsel for the Trustee, 45 Rockefeller Plaza, New York, New York 10111, Attn: David J. Sheehan and Jorian L. Rose; and (ii) Securities Investor Protection Corporation, 805 15th Street, N.W., Suite 800, Washington, D.C. 20005, Attn: Kevin H. Bell, so as to be so filed and received by no later than **April 11, 2012 at 4:00 p.m.** (“Response Deadline”).

**PLEASE TAKE FURTHER NOTICE** that if no responses are timely filed and served with respect to the Third Omnibus Motion, the Trustee may, on or after the Response Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed

order annexed to the Third Omnibus Motion, which order may be entered with no further notice or opportunity to be heard offered to any party.

Dated: March 16, 2012  
New York, New York

/s/ David J. Sheehan  
**Baker & Hostetler LLP**  
45 Rockefeller Plaza  
New York, New York 10111  
Tel: (212) 589-4200  
Fax: (212) 589-4201  
David J. Sheehan  
Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)  
Jorian L. Rose  
Email: [jrose@bakerlaw.com](mailto:jrose@bakerlaw.com)  
Seanna R. Brown  
Email: [sbrown@bakerlaw.com](mailto:sbrown@bakerlaw.com)  
Bik Cheema  
Email: [bcheema@bakerlaw.com](mailto:bcheema@bakerlaw.com)

*Attorneys for Irving H. Picard, Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff Investment  
Securities LLC and Bernard L. Madoff*

**Baker & Hostetler LLP**

45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)  
Jorian L. Rose  
Email: [jrose@bakerlaw.com](mailto:jrose@bakerlaw.com)  
Seanna R. Brown  
Email: [sbrown@bakerlaw.com](mailto:sbrown@bakerlaw.com)  
Bik Cheema  
Email: [bcheema@bakerlaw.com](mailto:bcheema@bakerlaw.com)

Hearing Date: April 18, 2012  
Time: 10:00 a.m.

Objections Due: April 11, 2012  
Time: 4:00 p.m.

*Attorneys for Irving H. Picard, Trustee  
for the Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC  
and Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA LIQUIDATION

(Substantively Consolidated)

**TRUSTEE'S THIRD OMNIBUS MOTION TO EXPUNGE CLAIMS AND OBJECTIONS  
OF CLAIMANTS THAT DID NOT INVEST WITH BLMIS OR IN ENTITIES THAT  
INVESTED IN BLMIS**

TO THE HONORABLE BURTON R. LIFLAND  
UNITED STATES BANKRUPTCY JUDGE:

Irving H. Picard, trustee (“Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the estate of Bernard L. Madoff (“Madoff”) (collectively, “Debtor”), by and through his undersigned counsel respectfully represent:

**Jurisdiction**

1. This Court has jurisdiction to consider this matter pursuant to §§ 78eee(b)(2) and 78eee(b)(4) of the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq., (“SIPA”),<sup>1</sup> and 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

**Background**

2. On December 11, 2008, the Securities and Exchange Commission (“SEC”) filed a Complaint in the United States District Court for the Southern District of New York against defendants Madoff and BLMIS, No. 08-CV-10791 (LLS) (the “Civil Case”).

3. On December 15, 2008, pursuant to section 78eee(a)(4)(A) of SIPA, the SEC consented to a combination of the Civil Case with an application filed by the Securities Investor Protection Corporation (“SIPC”). Thereafter, pursuant to section 78eee(a)(3) of SIPA, SIPC filed an application in the District Court alleging, *inter alia*, that the Debtor was not able to meet its obligations to securities customers as they came due and, accordingly, its customers needed the protection afforded by SIPA.

4. On December 15, 2008, the District Court entered an order pursuant to SIPA which, in pertinent part:

- (a) appointed Irving H. Picard as trustee for the liquidation of the business of BLMIS, pursuant to section 78eee(b)(3) of SIPA;

---

<sup>1</sup> Subsequent references to SIPA shall omit “15 U.S.C.”

- (b) appointed Baker & Hostetler LLP as counsel to the Trustee pursuant to section 78eee(b)(3) of SIPA;
- (c) removed the case to this Bankruptcy Court pursuant to section 78eee(b)(4) of SIPA; and
- (d) authorized the Trustee to take immediate possession of the property of the debtor, wherever located.

5. Under SIPA, the Trustee is responsible for determining claims, recovering and distributing customer property to BLMIS customers, and liquidating any other assets of the Debtor for the benefit of the estate and its creditors.

#### **Relief Requested**

6. The Trustee files this motion seeking to have the Court expunge any and all claims and objections filed by or on behalf of claimants (“Claimants”) that did not invest with BLMIS, or in entities that invested with BLMIS, pursuant to section 78fff–2(b)(2) of SIPA, Rule 3007(d) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and this Court’s order of December 23, 2008 (the “Claims Procedures Order”, Docket Number 12). Those Claimants are identified on Exhibit A under the heading “*Claims and Objections to be Expunged*” (collectively, the “Claims and Objections”).

7. The Trustee reserves all rights to object on any other basis to any of the Claims or Objections as to which the Court does not grant the relief requested herein.

#### **The Claims And Objections Should Be Expunged**

8. Upon review of the accounts and claims register maintained by Alix Partners LLP, the Trustee’s consultant and Court-approved claims agent in the above-captioned SIPA liquidation proceeding, the Trustee could find no evidence in the Debtor’s books and records to

indicate that the Claimants actually invested with BLMIS or in entities that invested with BLMIS. *See* attached for Cohen Affidavit, Ex. B.

9. Pursuant to the Claims Procedures Order, the Trustee is authorized to satisfy all customer claims and accounts which agree with the Debtor's books and records, or are otherwise established to the satisfaction of the Trustee. Moreover, section 78fff-2(b)(2) of SIPA requires the Trustee to discharge net equity claims only insofar as such obligations are ascertainable from the books and records of the debtor or are otherwise established to the satisfaction of the trustee. *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229, 237 (2d Cir. N.Y. 2011).

10. A proof of claim filed by a party who is not a creditor is not a properly filed proof of claim. *See In re Musicland Holding Corp.*, 362 B.R. 644, 652 (Bankr. S.D.N.Y. 2007) citing *Kahler v. FirstPlus Fin., Inc. (In re FirstPlus Fin., Inc.)*, 248 B.R. 60, 70 (Bankr. N.D. Tex. 2000). The Claimants have had ample opportunity to provide the Trustee with credible information to his satisfaction evidencing an investment with BLMIS directly or through another account holder. However, the Claimants have failed to show indicia of any such investment. Accordingly, those persons listed on Exhibit A have not established any relationship, no matter how remote or indirect, to BLMIS.

#### **Notice**

11. Notice of this motion has been provided by U.S. mail, postage prepaid, or email to (i) all Claimants listed on Exhibit A attached hereto (and their counsel) whose objections are pending before this Court; (ii) all parties that have filed a notice of appearance in this case; (iii) the SEC; (iv) the Internal Revenue Service; (v) the United States Attorney for the Southern District of New York; and (vi) SIPC (collectively, the "Notice Parties"), pursuant to the Order Establishing Notice Procedures (ECF No. 4560). In addition, all of the pleadings filed in

accordance with the schedule outlined above will be posted to the Trustee's website [www.madofftrustee.com](http://www.madofftrustee.com) and are accessible, without charge, from that site.

12. The Trustee submits that no other or further notice need be given.

13. No previous request for the relief sought herein has been made by the Trustee to this or any other Court.



WHEREFORE the Trustee respectfully requests entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: March 16, 2012  
New York, New York

/s/ David J. Sheehan  
**Baker & Hostetler LLP**  
45 Rockefeller Plaza  
New York, New York 10111  
Tel: (212) 589-4200  
Fax: (212) 589-4201  
David J. Sheehan  
Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)  
Jorian L. Rose  
Email: [jrose@bakerlaw.com](mailto:jrose@bakerlaw.com)  
Seanna R. Brown  
Email: [sbrown@bakerlaw.com](mailto:sbrown@bakerlaw.com)  
Bik Cheema  
Email: [bcheema@bakerlaw.com](mailto:bcheema@bakerlaw.com)

*Attorneys for Irving H. Picard, Trustee  
for the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff Investment  
Securities LLC and Bernard L. Madoff*